



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2005

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2005-00440

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215917.

The Midlothian Independent School District (the "district"), which you represent, received a request for information pertaining to a named district teacher; the entire recording of the district school board meeting of September 20, 2004, to include closed or executive session; and written minutes from the same meeting. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.114, 552.117, 552.130, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note that a portion of the information at issue in the present request was the subject of a prior ruling of this office, issued as Open Records Letter No. 2005-00025 (2005) on January 7, 2005. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We understand that the pertinent facts and circumstances have not changed since the issuance of Open Records Letter

No. 2005-00025. Thus, to the extent the records at issue in the present request are identical to records that were the subject of Open Records Letter No. 2005-00025, we determine the district must rely on that ruling as a previous determination for such records. To the extent the submitted education records are not identical to information at issue in Open Records Letter No. 2005-00025, we will address your claims with respect to this portion of the submitted information.

Next, you state that the district has released a recording of the open session of the September 20, 2004 meeting of the district school board. You have not submitted written minutes of the open session of the meeting, nor do you raise any exceptions to disclosure for such information. Thus, we presume the district has also released the written minutes at issue, to the extent they exist. If not, the district must release this information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). However, the district seeks to withhold the recording of the closed session of the meeting at issue pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request.¹ *See* Open Records Decision No. 495 (1988). We agree that the requested recording and minutes of a closed session of the district board must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. We next address your claimed exceptions to disclosure with respect to the submitted information.

You state that the submitted documents contain information that is confidential under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Section 552.026 of the

¹ As you acknowledge, the district is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). Section 552.114(a) of the Government Code excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995). As you seek to withhold the submitted education records in their entirety under FERPA, we will address the applicability of FERPA in this case.

Information must be withheld from required public disclosure under FERPA only to the extent reasonable and necessary to avoid personally identifying a particular student. *See* Open Records Decision Nos. 332 (1982), 206 (1978). As you acknowledge, the handwritten documents created by students that you have submitted as Exhibit C must be withheld in their entirety. *See* Open Records Decision No. 224 (1979) (student's handwritten comments would make identity of student easily traceable and such comments are therefore excepted by statutory predecessor to section 552.114). You also indicate that redacting the names of students from the remaining education records will not suffice to avoid personally identifying the students in this instance. You therefore contend the remaining education records must be withheld in their entirety. Based on your representations and our review, we determine the district must withhold the remaining information at issue in its entirety pursuant to FERPA.

In summary, to the extent the submitted records include information that was the subject of Open Records Letter No. 2005-00025, the district must continue to follow that ruling with respect to such information. The district must withhold the requested recording and meeting minutes pertaining to a closed session of a meeting of the district school board pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. The meeting minutes of the open session of the meeting at issue must be released to the requestor, to the extent they exist. The remainder of the submitted information must be withheld in its entirety under FERPA.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

² Based on these findings, we need not reach your remaining claimed exceptions to disclosure.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 215917

Enc: Submitted documents

c: Mr. Mark D. Griffith
Griffith & Associates
108 West Main Street
Waxahachie, Texas 75165
(w/o enclosures)